TSAWWASSEN FIRST NATION
TREATY NEGOTIATIONS

SUMMARY OF
AGREEMENT-IN-PRINCIPLE

July 9, 2003

Canada

TSAWWASSEN FIRST NATION

BRITISH COLUMBIA

This is a summary of the Tsawwassen First Nation Agreement-in-Principle (AIP). The chief negotiators from Tsawwassen First Nation, Canada and British Columbia have recommended the AIP for approval by their respective principals, which are the Tsawwassen First Nation, and the federal and provincial cabinets. Tsawwassen First Nation's approval process requires approval of its members.

The AIP represents broad consensus among the three parties on the language and provisions contained in the document. It is not a legally binding document. If approved by the principals, the document will form the basis for negotiating the Final Agreement and a governance agreement.

For more information, please contact any of the sources listed at the end of this document.

Introduction

The Tsawwassen First Nation AIP deals with land, cash, resources, culture, and related governance provisions. The AIP sets out certain law-making authorities related to Tsawwassen First Nation's management of their lands, resources, and culture. Between AIP and Final Agreement, the parties have also agreed to negotiate the nature and scope of other law-making authorities that may be included in the Final Agreement and a governance agreement.

The AIP is the foundation for undertaking Final Agreement negotiations and completes stage 4 of the 6-stage British Columbia treaty process.

Agreement-in-Principle Overview

General Provisions

- The AIP is not a Final Agreement (i.e., a "treaty") and is not legally binding.
- To achieve certainty, the treaty will be the full and final settlement of Tsawwassen First Nation's aboriginal land rights and any other aboriginal rights related to the matters set out in the Final Agreement.
- The parties will achieve certainty by modifying any such aboriginal rights into the rights set out in the Final Agreement.
- With respect to a governance agreement, Tsawwassen First Nation will agree not to assert or exercise any rights other than those set out in the governance agreement for as long as that agreement is in effect.
- Any other right either not addressed in a governance agreement or modified into a right set out in the Final Agreement, may be incorporated into the agreements through an orderly process that requires the agreement of all three parties.
- The Canadian Constitution will not be altered and the *Canadian Charter of Rights and Freedoms* will continue to apply.

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- Tsawwassen First Nation will have agreed-to law-making authorities concurrent with federal and provincial laws.
- Federal and provincial laws will continue to apply.
- The Final Agreement will provide that, subject to transitional provisions, the *Indian Act* will not apply to Tsawwassen First Nation, Tsawwassen government or Tsawwassen members, except for the purpose of determining whether an individual is an "Indian" within the meaning of that Act.

Lands

- On the effective date of the Final Agreement, Tsawwassen First Nation lands will consist of approximately 427 ha. of provincial Crown land and Tsawwassen First Nation's current Indian reserve.
- Tsawwassen First Nation will own Tsawwassen First Nation lands. Those to which Tsawwassen First Nation governance authorities apply are called "Tsawwassen Lands". Tsawwassen Lands will comprise the existing reserve and approximately 365 ha of provincial Crown land. Those lands outside Tsawwassen First Nation jurisdiction are known as "Other Tsawwassen Lands". Other Tsawwassen Lands will comprise approximately 62 hectares of provincial Crown lands. (See map attached). All existing legal interests on Tsawwassen lands will be identified and protected, including those of third parties and certificates of possession.
- Expropriation of Tsawwassen Lands may occur only in accordance with the provisions of the Final Agreement. This will include provisions to avoid expropriation where reasonably feasible and to provide fair compensation.
- Before Final Agreement the parties will negotiate conditions under which lands, purchased by Tsawwassen First Nation post-treaty, could become Tsawwassen Lands.
- Tsawwassen First Nation will have law-making authority concerning the management and development of Tsawwassen Lands.
- The parties acknowledge the objective of Tsawwassen First Nation to use its lands to support the growth and development of Tsawwassen First Nation as a viable community.
- The parties will engage in a process with the Agricultural Land Commission to assess the prospects for excluding Tsawwassen Lands from the agricultural land reserve post-treaty. Subject to the outcome of the process, Tsawwassen Lands and Other Tsawwassen Lands will be subject to any designation as agricultural land reserve in effect immediately before the effective date.
- The Final Agreement will contain provisions by whichTsawwassen First Nation will have rights of refusal to purchase the Category B Lands identified in the 1998 Roberts Bank Protocol Agreement.
- Before the Final Agreement, the parties intend to address Tsawwassen First Nation's objectives with respect to Highway #17 as set out in the AIP.

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Subsurface and Mineral Resources

- Subsurface resources on Tsawwassen Lands will be owned by Tsawwassen First Nation, subject to agreement on resource management, extraction regimes and terms and conditions of ownership.

Land Management and Use

- Tsawwassen First Nation will have law-making authority with respect to the administration and management of Tsawwassen Lands.
- When Tsawwassen First Nation makes a planning and land use management law it will be on the basis of principles in respect of consultation and transparency similar to those of municipalities undertaking similar laws.
- Before making a planning and land use management law, Tsawwassen First Nation will consult with residents of Tsawwassen Lands who are not Tsawwassen members.

Access and Roads

- Tsawwassen First Nation will have the rights of a fee simple land owner in respect of control of public access to Tsawwassen Lands and Roads, and federal and provincial trespass laws will apply.
- Tsawwassen First Nation will own certain roads known as Tsawwassen Roads and will be responsible for their maintenance and repair.
- Before Final Agreement the parties will negotiate which local roads that are adjacent to Tsawwassen Lands may become Tsawwassen Roads.
- Access is guaranteed for legal interests on Tsawwassen Lands and Tsawwassen Roads, including residents, lessees, and visitors and agents of the Crown undertaking work on public utilities or infrastructure.
- Tsawwassen First Nation may regulate public access to Tsawwassen Lands and Roads, including the breakwater fronting the existing Tsawwassen Reserve that is owned by Tsawwassen First Nation.
- The Crown will continue to own dykes that border Tsawwassen Lands.
- Any party may respond to natural disasters on Crown or Tsawwassen Lands and notification provisions to the other parties apply.
- In the event of a provincial declaration of emergency or natural disaster, access to Tsawwassen Roads will be in accordance with the laws of general application.
- Provincial and federal representatives, including persons acting in an official capacity pursuant to lawful authority, may access Tsawwassen Lands to carry out their duties.
- Public utility rights-of-way identified in appendices to the Final Agreement will continue on Tsawwassen Lands.

Forest Resources

- Tsawwassen First Nation will own and manage the forest resources on Tsawwassen Lands.
- Tsawwassen First Nation will be able to make laws with respect to forest management consistent with provincial standards for private lands.

- Outside the Final Agreement, the parties will identify a mechanism to provide Tsawwassen First Nation with the annual opportunity to harvest firewood, or on an as requested basis, specific timber for cultural purposes.
- Outside the Final Agreement, the parties will identify the mechanism to provide a log salvage permit to a nominee of Tsawwassen First Nation who meets the qualifications required of log salvage permittees.
- Tsawwassen First Nation will receive a one-time payment of $100,000 to acquire forest resources for purposes determined by Tsawwassen First Nation.

Fisheries

- The federal and provincial Ministers will retain authority, within their respective jurisdictions, to manage and conserve fish and fish habitat.
- Tsawwassen First Nation will have the right to harvest fish for domestic purposes.
- The harvest level for Fraser River sockeye salmon that may be harvested for domestic purposes will be based on a formula that would, if applied using historic data, result in an average of 12,000 fish per year.
- The harvest level for Fraser River chum that may be harvested for domestic purposes will be based on a formula that would, if applied using historic data, result in an average of 2,000 fish per year.
- The harvest level of Fraser River chinook salmon that may be harvested for domestic purposes will be an average of 625 fish per year.
- The harvest level of Fraser River coho salmon that may be harvested for domestic purposes will be an average of 500 fish per year.
- The right to harvest fish will be limited by measures necessary for conservation, public health or public safety.
- There will be a treaty protected fisheries allocation for domestic purposes in the Final Agreement.
- Before the Final Agreement the parties will agree on the right of Tsawwassen First Nation to trade and barter fish and aquatic plants harvested for domestic purposes.
- Tsawwassen First Nation may participate in fisheries management through a Joint Fisheries Committee (JFC), which will be open to representatives from Tsawwassen First Nation, British Columbia and Canada.
- Tsawwassen First Nation will develop an annual fishing plan for their annual harvest and will review this plan with the JFC.
- For domestic fisheries, the federal fisheries Minister will issue a harvest document authorizing Tsawwassen First Nation fisheries each year based on recommendations from the JFC and the annual fishing plan.
- Tsawwassen First Nation will also participate in a regional fisheries management advisory process if one is established.
- Tsawwassen First Nation will have law-making authority with respect to the internal regulation of their fishery, including who can participate in the harvest of fish and how the harvest will be distributed among Tsawwassen First Nation members.

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- In order to provide Tsawwassen First Nation with commercial fishing opportunities, Canada will issue licences consistent with arrangements, including method of harvest, to be agreed by the Parties before the Final Agreement. These licences will represent a fishing capacity equivalent to 0.78% of Canadian commercial total catch of Fraser river sockeye salmon, 0.78% of Canadian commercial total catch of Fraser river pink salmon and 3.27% of terminal commercial catch of Fraser River chum salmon.
- Before the Final Agreement, the parties will negotiate the method of delivery to Tsawwassen First Nation of commercial opportunities.
- Any Tsawwassen First Nation commercial fishery will not be part of the Final Agreement and will not be a treaty or land claims agreement and will not affirm or recognize any rights. The parties will negotiate how the Final Agreement will refer to any commercial arrangements for Tsawwassen First Nation fisheries.
- Any commercial fishery will have the same priority as other commercial fisheries in fisheries management decisions made by the Minister of Fisheries and Oceans, and these fish may be sold once harvested.
- A fund of $1,000,000 will be established on the effective date of the treaty to enable Tsawwassen First Nation to increase its commercial fishing capacity.
- Before Final Agreement, Canada and Tsawwassen First Nation will negotiate and attempt to reach agreement on a one-time payment of up to $1,000,000 by Canada that will be used for the establishment of a Tsawwassen First Nation Fisheries Fund.

Wildlife and Migratory Birds

- The federal and provincial Ministers will retain authority, within their respective jurisdictions, to manage and conserve wildlife and migratory birds and their habitat.
- Tsawwassen First Nation will have the right to harvest wildlife and migratory birds for domestic purposes.
- Harvesting will be subject to measures necessary for conservation, public health or public safety.
- Tsawwassen First Nation may trade and barter wildlife but the parties must agree on the geographic scope of the right.
- Tsawwassen First Nation will have law-making authority with respect to the internal management of their harvest including the designation and documentation of Tsawwassen First Nation hunters and management of wildlife and migratory birds and their habitat on Tsawwassen Lands.
- Before Final Agreement, the parties will negotiate specific aspects of the Tsawwassen First Nation rights to harvest Wildlife and Migratory Birds and management of wildlife and migratory birds harvested under the Final Agreement.
- Tsawwassen First Nation may participate in a regional wildlife management process if one is established.
- The boundary of the Migratory Bird harvest area is Tsawwassen Territory.

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- The Final Agreement will set out the boundaries of a wildlife harvest area. The parties will agree on what is necessary to resolve issues of overlap as they relate to the migratory bird and wildlife harvest area and wildlife allocations.

Parks, Protected Areas and Gathering

- The federal and provincial Ministers will retain authority for the management, administration and control of national parks, national park reserves, national marine conservation areas, national marine conservation area reserves and provincial parks and protected areas.
- Tsawwassen Members may gather plants and strip bark for domestic purposes in provincial parks and protected areas, and national park and park reserves in Tsawwassen Territory.
- All gathering activities are subject to measures necessary for conservation, public health and public safety.
- Before Final Agreement, the parties will work together to determine the relationship between this treaty right and the park management plans and the need for an annual gathering and bark stripping plan.
- Tsawwassen First Nation may make laws regarding internal management of the gathering and bark stripping right.
- The parties will agree on how Tsawwassen First Nation will be consulted on creation of national parks and how Tsawwassen First Nation will participate in the creation, boundary modification and naming of provincial parks and protected areas.

Culture and Heritage

- Tsawwassen First Nation may make laws on Tsawwassen Lands in respect of Tsawwassen First Nation culture, heritage and language, Tsawwassen artifacts owned by Tsawwassen First Nation and Tsawwassen artifacts discovered within Tsawwassen Lands.
- Aboriginal artifacts found on Tsawwassen Lands after the Final Agreement will be deemed to belong to the Tsawwassen First Nation.
- Before the Final Agreement, the parties will consider the development of provincial, regional or local government understandings regarding the accidental discovery of Tsawwassen artifacts and ancient human remains off Tsawwassen Lands. After the effective date of the treaty, if any Tsawwassen artifact comes into the permanent possession or under the control of BC or Canada, BC or Canada will negotiate matters related to the disposition of the Tsawwassen artifact.
- A treaty related measure will be negotiated to assist Tsawwassen First Nation in reviewing artifacts and archives held at the Royal British Columbia Museum, the Canadian Museum of Civilization and Parks Canada to facilitate the identification of potential Tsawwassen artifacts.
- The parties will negotiate the loan, sharing or transfer of agreed-to Tsawwassen First Nation artifacts with the Canadian Museum of Civilization, Parks Canada, and the Royal British Columbia Museum.

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- Human remains, associated burial objects and other burial objects of Tsawwassen origin removed from Tsawwassen heritage sites and in the possession or under the control of Canada or British Columbia will be returned to Tsawwassen First Nation, according to federal and provincial policies and protocols.
- The parties will discuss a Tsawwassen role in the management of Tsawwassen heritage sites off-treaty land.
- BC will provide to Tsawwassen First Nation a one-time payment of up to $1,000,000 for cultural purposes as determined by Tsawwassen First Nation.
- The parties will negotiate a process through which geographic features or places in Tsawwassen Territory may be renamed with Tsawwassen names.

Environmental Management

- Tsawwassen First Nation will have the authority to make environmental laws, including management, protection or preservation of the environment on Tsawwassen Lands. To the extent this authority relates to fish and fish habitat, the Parties intend to negotiate the nature and scope of Tsawwassen First Nation's power to make laws, applicable on Tsawwassen Lands.
- Tsawwassen First Nation may participate in established federal or provincial environmental assessment processes for proposed projects that may have adverse effects on its Lands or treaty rights.
- No projects reviewable under federal or provincial legislation located on Tsawwassen Lands will proceed without the consent of Tsawwassen First Nation.

Governance

- The AIP sets out provisions concerning matters such as: the nature of the Tsawwassen First Nation government, law-making authorities, the requirements for a Tsawwassen First Nation constitution, processes for appeal or review of administrative decisions, Tsawwassen First Nation membership, and the relationship of the Tsawwassen First Nation government with residents of Tsawwassen Lands who are not Tsawwassen members.
- Tsawwassen First Nation will have a constitution that will include principles such as accountability and a democratically-elected government.
- The parties intend to negotiate the nature and scope of each Tsawwassen First Nation power to make laws to be set out in the Final Agreement or in a governance agreement, including to whom Tsawwassen law applies, and where and when Tsawwassen law applies. A governance agreement would not be part of the Final Agreement and would not be a treaty or a land claims agreement.

Local and Regional Government Relationships

- The parties acknowledge that access to services is a vital issue for a self-governing community, and that this is a critical issue for Tsawwassen First Nation that must be resolved before Final Agreement.
- The parties will initiate a treaty related measure to support development of intergovernmental relationships, and options and issues concerning membership in the Greater Vancouver Regional District.

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- The parties will establish an Intergovernmental Relations Technical Working group and invite participation by local and regional governments to address technical issues.

Capital Transfer

- Tsawwassen First Nation will receive $10,100,000 according to a negotiated schedule of payments.
- A fund of $1,000,000 will be established on the effective date of the treaty for Tsawwassen First Nation economic development purposes.
- When the Final Agreement is initialled by the parties, Canada will determine the outstanding amount of the negotiation loans made by Canada to Tsawwassen First Nation, and will prepare a schedule for the repayment of this outstanding loan.

Fiscal Relations

- Fiscal Agreements with Tsawwassen First Nation will be negotiated every five years for funding of agreed-upon programs and services.
- Fiscal agreements will not be part of the Final Agreement.
- Tsawwassen First Nation will contribute to the funding of its activities from its own revenues.

Taxation

- Tsawwassen First Nation will have law-making authority in respect of direct taxation of Tsawwassen Members on Tsawwassen Lands.
- British Columbia agrees not to impose property tax on persons on Tsawwassen Lands if British Columbia and Tsawwassen First Nation successfully negotiate, before the Final Agreement, the terms and conditions for the taxation of all persons on Tsawwassen Lands.
- Due to the fact that section 87 of the *Indian Act* will not apply after the effective date, the parties agree to negotiate before the Final Agreement transitional tax measures.

Eligibility and Enrolment

- The AIP sets out the eligibility criteria for the enrolment of individuals as beneficiaries under the Final Agreement.
- An Enrolment Committee and Enrolment Appeal Board will be established, and associated costs will be covered by Canada and British Columbia.

Implementation

- Before the Final Agreement, Canada, British Columbia and Tsawwassen First Nation will conclude an implementation plan, which is not to be part of the Final Agreement.
- The implementation plan will identify the activities to be undertaken to fulfill the obligations of the Final Agreement, and the party responsible and timelines for carrying out those activities.

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Dispute Resolution

- A dispute resolution process will be in the Final Agreement.
- The dispute resolution process will apply to conflicts or disputes regarding the interpretation, application or implementation of the Final Agreement or a breach or anticipated breach of the Final Agreement.
- The parties agree that, as a general principle, they will work to prevent or minimize disagreements and to resolve disagreements, should they arise, in a non-adversarial, collaborative and informal manner.

Ratification of the Final Agreement

- A ratification committee comprised of representatives of each Party will be established to oversee the ratification process.
- Ratification of the Final Agreement by Tsawwassen First Nation requires that a majority of eligible voters vote in favour of entering into the Final Agreement.
- Ratification by British Columbia and Canada requires the signatures of respective Ministers of the Crown and the coming into force of provincial and federal settlement legislation that will give effect to the Final Agreement.

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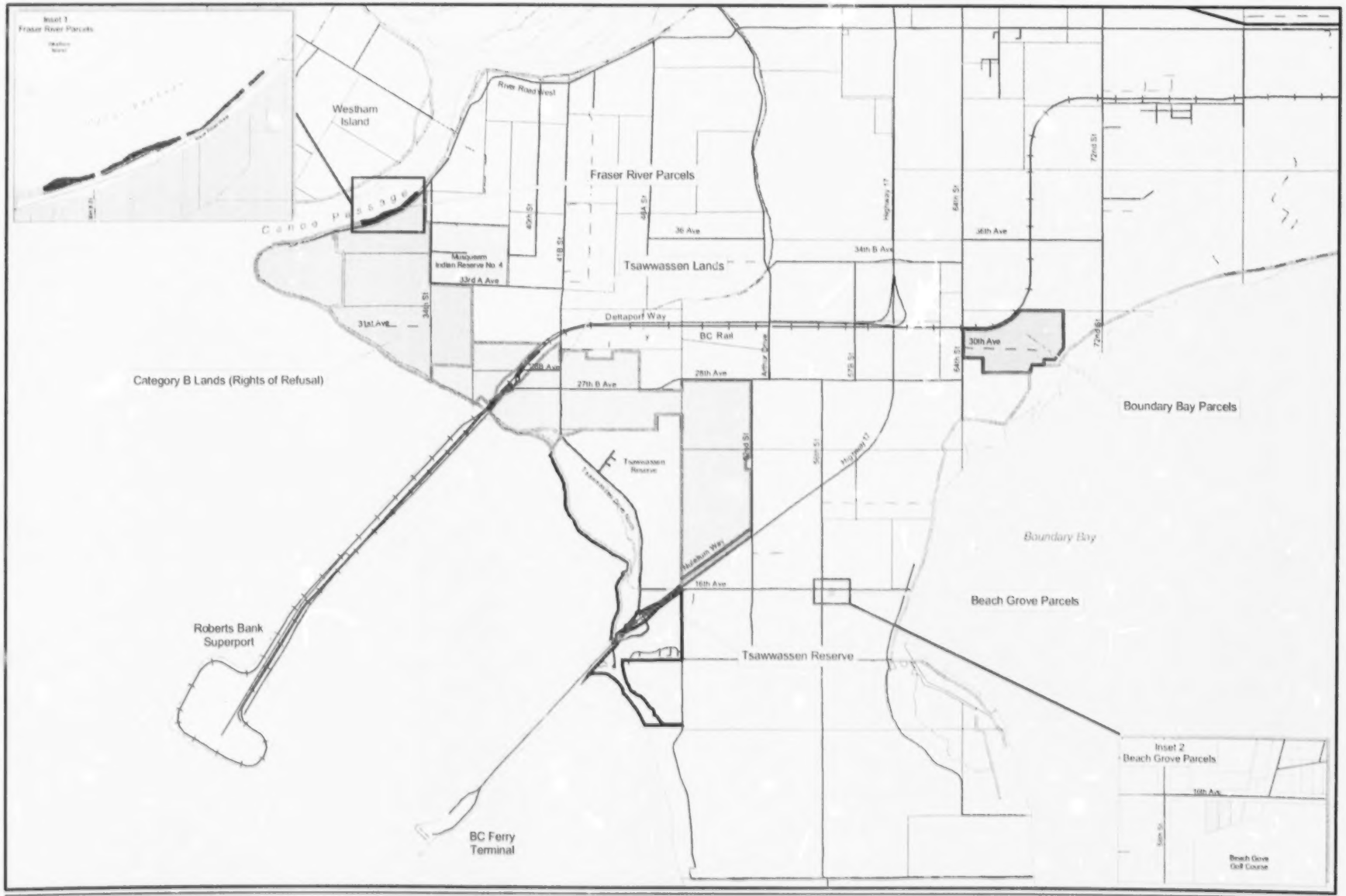
Overview of Tsawwassen First Nation Agreement-in-Principle


Inset 1
Fraser River Parcels
Westham Island
River Road West
Canoe Passage
Fraser River Parcels
Tsawwassen Lands
Musqueam Indian Reserve No. 4
33rd A Ave
36 Ave
34th B Ave
Deltaport Way
BC Rail
31st Ave
30th Ave
28th Ave
27th B Ave
Category B Lands (Rights of Refusal)
Boundary Bay Parcels
Tsawwassen Reserve
Boundary Bay
Beach Grove Parcels
Roberts Bank Superport
Tsawwassen Reserve
BC Ferry Terminal
Inset 2
Beach Grove Parcels
16th Ave
Beach Grove Golf Course
Legend
Road (Paved)
Road (Gravel)
Rail Line
Waterways
Dykes
Tsawwassen Reserve
District Lots or Sections
Tsawwassen Lands
Fraser River Parcels
Category B Lands (Rights of Refusal)
Boundary Bay Parcels
Beach Grove Parcels
Crown Corridors
0 0.5 1
Kilometers
This map is part of the Tsawwassen First Nation Agreement-in-Principle
Produced by British Columbia. Without Prejudice.
This map is for purposes of illustration only. The legal descriptions of the land parcels contained in the Final Agreement will provide the definitive information. Before the Final Agreement, the land parcels will be surveyed and will be registered in the Land Title Office with their revised legal descriptions, as contained in the Final Agreement.
The interests in the Tsawwassen Reserve are yet to be reviewed.
This map does not represent any interests in the reserve.
Existing interests and land parcel descriptions are listed in Appendix C.
June 20, 2003

For more information, please contact:

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www.tsawwassen-fn.org
www.inac.gc.ca
www.gov.bc.ca/tno/negotiation/First_Nations_in_the_process/tsawwassen.htm